



Regulation Development Update

October 26, 2018

DHEC produces this Regulation Development Update within one business day of publication of the South Carolina State Register (the fourth Friday of each month).

The Update reports DHEC's regulation development activity, including proposed new regulations, amendments, and repeals of existing regulations, currently pending. Each entry presents a synopsis, status, and (upon assignment by the S.C. Legislative Council) a searchable S.C. State Register Document Number. Legislative Council assigns a Document Number at the Notice of Proposed Regulation stage of the regulation [promulgation process](#). The Document Number subsequently remains with the particular regulation development activity throughout the process.

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While DHEC has made every effort to maintain the accuracy of content presented in this Regulation Development Update, it reserves the right to correct errors when discovered.

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NO PENDING REGULATION DEVELOPMENT ACTIVITY FOR:

The following program areas have no pending regulation development activities at this time.

Chief Financial Officer

Budgets and Financial Management

General Counsel

Environmental Affairs

Environmental Affairs Administration
Ocean and Coastal Resource Management

Health Regulation

Certificate of Need
Drug Control
Emergency Medical Services and Trauma
Radiological Health

Public Health

Public Health Laboratory
Public Health Preparedness
Public Health Statistics and Information Services
Maternal and Child Health Services

There are no DHEC Emergency Regulations in effect at this time.

PENDING REGULATION DEVELOPMENT ACTIVITY FOR:

The following program areas have pending regulation development activities at this time.

ENVIRONMENTAL AFFAIRS

AIR QUALITY – Proposed Amendments

R.61-62, Air Pollution Control Regulations and Standards

State Register Document 4815

Summary:

- (1) The Department proposes amending Regulation 61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits.
- (2) The Department proposes amending the introductory paragraph to Regulation 61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation's text.
- (3) The Department proposes amending Regulation 61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO_x), to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling.
- (4) The Department proposes amending Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling.
- (5) The Department proposes amending Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to propose corrections for internal consistency, punctuation, codification, and spelling.
- (6) The Department proposes amending Regulation 61-62.70, Title V Operating Permit Program; Regulation 61-62.1, Definitions and General Requirements; Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration; and Regulation 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to update public participation procedures.

The Department may also propose other changes to Regulation 61-62, Air Pollution Control Regulations and Standards, that may include definitional updates, clarification of certain permitting provisions, and other changes or additions as deemed necessary, as well as corrections for internal consistency,

clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4815.docx>

History and Status:

Notice of Drafting published:	October 27, 2017
Drafting comment period closed:	November 27, 2017
Board approval to publish Notice of Proposed Regulation:	June 7, 2018
Notice of Proposed Regulation published:	June 22, 2018
Proposed Regulation comment period closed:	July 23, 2018
Public Hearing:	November 8, 2018 (scheduled) September 13, 2018 (cancelled)

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R.61-62, Air Pollution Control Regulations and Standards

State Register Document TBD

Note: These proposed amendments were previously published as Document Number 4814, which is terminated as of September 28, 2018. A new Notice of Drafting with changes to the proposed amendments has been published.

Summary:

The United States Environmental Protection Agency (EPA) has been promulgating amendments to the Code of Federal Regulations throughout each calendar year. Recent federal amendments to 40 CFR Parts 60, 61, and 63 include technical amendments regarding New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants (NESHAP), and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories.

The Department proposes amending R.61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; R.61-62.61, National Emission Standards for Hazardous Air Pollutants, and R. 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference recent federal amendments promulgated from January 1, 2017, through December 31, 2017. The Department also proposes changes to R. 61-62.68, Chemical Accident Prevention Provisions, to maintain compliance with federal law and make corrections for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary. Additionally, the Department proposes striking paragraph (a)(6) of Section 70.3, Applicability, in R.61-62.70, Title V Operating Permit Program, to maintain state compliance with federal regulations.

The Department also proposes amending R.61-62.96 to repeal the Clean Air Interstate Rule (CAIR) trading program regulations (Subparts AA through II, AAA through III, and AAAA through IIII) and reinstate applicable portions of the EPA’s “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone” (NOX SIP Call), with amendments as necessary, to maintain state compliance with federal regulations. The Department adopted R.61-62.97, the Cross-State Air Pollution Rule (CSAPR) Trading Program, on August 25, 2017. Subparts AA through II, AAA through III, and AAAA through IIII of R.61-62.96 are based on the federal CAIR regulation, which EPA has since replaced with federal CSAPR requirements implemented by R.61-62.97. As a result, federal CAIR requirements implemented by R.61-62.96 are no longer in effect. The proposed NOX SIP Call regulations will maintain state compliance with federal NOX SIP Call requirements that remain applicable following the sunset and repeal of CAIR.

The Department may also propose other changes to Regulation 61-62, Air Pollution Control Regulations and Standards, as deemed necessary to maintain compliance with federal law. These changes may include, but are not limited to, corrections or other changes for internal consistency, clarification, reference, punctuation, codification, formatting, spelling, and overall improvement of the text of Regulation 61-62 as necessary.

In accordance with 1976 Code Section 1-23-120(H), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law.

History and Status:

Notice of Drafting published:	September 28, 2018
Drafting comment period will close:	October 29, 2018

*This Notice of Drafting supersedes the previous one published on March 23, 2018.

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ENVIRONMENTAL HEALTH SERVICES – Proposed Amendments and Repeals

R.61-25, Retail Food Establishments

R.61-37, Retail Food Establishment Inspection Fees

State Register Document 4842

Summary:

The intent of R.61-25, Retail Food Establishments, is to safeguard public health and provide consumers safe, unadulterated food and food products at the retail level. This regulation governs restaurants, grocery stores, school cafeterias, and other establishments where food is prepared and served to the public. R.61-25 was last amended in 2014.

The proposed amendments herein will enable the Department of Health and Environmental Control (“Department”), through regulation, to meet the current standards of the 2017 United States Food and Drug Administration (“FDA”) Food Code. The FDA Food Code is the national standard for state, local, and tribal food protection programs. The FDA Food Code offers practical, science-based guidance that addresses the risk factors known to cause foodborne illness outbreaks in retail food establishment settings. It is amended every two (2) years and published in full every four (4) years by the national Conference for Food Protection, comprised of food safety regulators, food scientists, industry representatives, and members of academia.

These amendments also include proposed revisions to selected sections of Chapter 9 of R.61-25 to reflect the current business models of the food service industry based on comments and suggestions from the regulated community.

The amendments also include combining R.61-25 with revised provisions of R.61-37, Retail Food Establishment Inspection Fees, last amended in 2002. Specifically, the Department proposes revising fee schedules currently residing in R.61-37, placing the fee schedules in R.61-25, and combining the two regulations by repealing R.61-37, while allowing for necessary program support through an increase in inspection fees. This would provide the retail food industry with one streamlined regulation.

The proposed amendments to R.61-25 also include other changes as deemed necessary by the Department to improve the overall clarity, organization, and quality of the regulation. These changes include, but are not limited to, stylistic changes, updates to definitions and exemptions, corrections for clarity, readability, grammar, punctuation, references, and codification, and overall improvement of the text of the regulation.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these amendments.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4842.docx>

History and Status:

Notice of Drafting published:

August 24, 2018

Drafting comment period closed:	September 24, 2018
Board approval to publish Notice of Proposed Regulation:	October 12, 2018
Notice of Proposed Regulation published:	October 26, 2018
Proposed Regulation comment period will close:	November 26, 2018
Public Hearing:	December 13, 2018 (scheduled)

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R.61-55, Septic Tank Site Evaluation Fees

R.61-56, Onsite Wastewater Systems

R.61-56.1, License to Construct or Clean Onsite Sewage Treatment and Disposal Systems and Self-Contained Toilets

R.61-56.2, Licensing of Onsite Wastewater Master Contractors

State Register Document TBD

Summary:

The Department proposes amending Regulation 61-56, Onsite Wastewater Systems, to add new system standards, clarify and amend definitions, and clarify and update selected sections. The amendments will clarify and modernize the regulation to address needed updates in administering the Onsite Wastewater program.

The Department further proposes amending the fee schedule currently appearing in R.61-55 and, in the interest of efficiency, moving the amended fee scale to R.61-56. This will entail repealing R.61-55 and simultaneously adding its provisions, as amended, to R.61-56. The proposed amendments will include amended definitions, increase in fees, a new, expedited permitting process with associated fees, and assignment of application fees to specific performed services. These amendments would update fees to an appropriate level for implementing site evaluations for proposed individual sewage treatment and disposal systems.

The Department also proposes amending provisions of R.61-56.1 and R.61-56.2 and merging R.61-56.1 and R.61-56.2 into R.61-56 to improve efficiency and clarity for Department staff, regulated entities, and the public. This will entail repealing R.61-56.1 and R.61-56.2 and simultaneously adding their provisions, as amended, to R.61-56. The proposed amendments will include changes to licensing and fee requirements for pumpers and haulers currently under R.61-56.1. The proposed amendments also will revise provisions currently contained in R.61-56.2 to implement a tiered licensing program to establish improved competency of onsite wastewater system contractors/installers. This approach includes new requirements for examination, continuing education, and an associated licensure fee.

The Department may also include stylistic changes for internal consistency, such as corrections for clarity in wording, references, grammar, outlining and codification, and such other changes as necessary to improve the overall quality of the regulation.

Legislative review is required.

History and Status:

Notice of Drafting published:

April 27, 2018

Drafting comment period closed:

May 28, 2018

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LAND AND WASTE MANAGEMENT – Proposed Amendments

R.61-79, Hazardous Waste Management Regulations (Imports and Exports of Hazardous Waste Rule)

State Register Document 4840

Summary:

The Department of Health and Environmental Control (Department) proposes amending R.61-79, Hazardous Waste Management Regulations, to adopt the “Imports and Exports of Hazardous Waste Rule” published on November 28, 2016 at 81 FR 85696-85729 and on August 29, 2017 at 82 FR 41015-41016 by the United States Environmental Protection Agency (“EPA”). The proposed amendment will support the Department’s goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner. This amendment will make existing import- and export-related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development, enable electronic submittal to the EPA of all import and export-related documents (e.g., export notices, export annual reports), and enable electronic validation of consent in the Automated Export System (“AES”) for export shipments subject to the Resource Conservation and Recovery Act (“RCRA”) export consent requirements prior to exit. Adoption of this rule is required to comply with federal law and will bring R.61-79 into conformity with the federal regulation.

General Assembly review is not required.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4840.docx>

History and Status:

Notice of Drafting published:	April 27, 2018
Drafting comment period closed:	May 28, 2018
Board approval to publish Notice of Proposed Regulation:	October 12, 2018
Notice of Proposed Regulation published:	October 26, 2018
Proposed Regulation comment period will close:	November 26, 2018
Public Hearing:	December 13, 2018 (scheduled)

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R.61-79, Hazardous Waste Management Regulations (Hazardous Waste Generator Improvements Rule)

State Register Document 4841

Summary:

The Department of Health and Environmental Control ("Department") proposes to amend R.61-79, Hazardous Waste Management Regulations, to adopt the Environmental Protection Agency's ("EPA") Hazardous Waste Generator Improvements Rule published November 28, 2016, at 81 FR 85732-85829. The proposed amendments will support the Department's goal of promoting and protecting the health of the public and the environment in a more efficient and effective manner.

The amendments will reorganize the hazardous waste generator regulations to improve their usability by the regulated community, provide a better understanding of how the Resource Conservation and Recovery Act ("RCRA") hazardous waste generator regulatory program works, address gaps in existing regulations to strengthen environmental protections, provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner, and make technical corrections to address inadvertent errors and remove obsolete references to programs that no longer exist.

The EPA periodically promulgates regulations that are either mandatory for authorized state programs to adopt or maintain program equivalency or are optional for states because the changes are less stringent than the current federal regulations. While the majority of the EPA's Hazardous Waste Generator Improvements Rule is equivalent to current state regulations and optional for state adoption, several provisions are more stringent and must be adopted by the Department to maintain federal program authorization.

Due to the interrelated nature of the equivalent provisions and the more stringent provisions, the Department proposes adopting the rule in a single drafting that requires General Assembly review.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4841.docx>

History and Status:

Notice of Drafting published:	April 27, 2018
Drafting comment period closed:	May 28, 2018
Board approval to publish Notice of Proposed Regulation:	October 12, 2018
Notice of Proposed Regulation published:	October 26, 2018
Proposed Regulation comment period will close:	November 26, 2018
Public Hearing:	December 13, 2018 (scheduled)

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WATER – Proposed Repeal

R.61-67.1, Requirements for State Water Pollution Control Revolving Fund Loan Assistance

State Register Document 4838

Summary:

The Department of Health and Environmental Control (“Department”) proposes repeal of R.61-67.1. The regulation describes the process the Department and the former South Carolina Budget and Control Board followed in administering the State Water Pollution Revolving Fund received in federal grants from the Environmental Protection Agency (“EPA”). In 1992, the General Assembly repealed S.C. Code Section 48-6-10 et seq. and replaced it with the South Carolina Water Quality Revolving Fund Authority Act (S.C. Code Section 48-5-10 et seq.). Passage of the South Carolina Water Quality Revolving Fund Authority Act (“Act”) has rendered R.61-67.1 obsolete. The Act provides authority for the Department and the South Carolina Water Quality Revolving Fund Authority to administer the South Carolina clean water and drinking water revolving funds program and federal grants received as supplements to the revolving funds from the EPA. The South Carolina Water Quality Revolving Fund Authority comprises the members of the State Fiscal Accountability Authority, with administrative and implementation support from the South Carolina Rural Infrastructure Authority (“RIA”).

Repeal of the regulation will have no impact or implications for the current administration and implementation of the South Carolina Clean Water State Revolving Fund (“CWSRF”). The CWSRF, like its predecessor, the State Water Pollution Revolving Fund under the repealed Title 48, Chapter 6, provides low interest loans to public utilities and local governments for wastewater and stormwater infrastructure projects. The Department and RIA are able to effectively administer and implement the state revolving funds program using the state statute, Title 48, Chapter 5, and federal laws, regulations, and grant requirements that govern the use of the funds. Other existing state laws and regulations also are used to implement the program such as environmental permitting regulations that govern the design and construction of wastewater and drinking water infrastructure projects.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of this repeal.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4838.docx>

History and Status:

Notice of Drafting published:	June 22, 2018
Drafting comment period will close:	July 23, 2018
Board approval to publish Notice of Proposed Regulation:	October 12, 2018
Notice of Proposed Regulation published:	October 26, 2018
Proposed Regulation comment period will close:	November 26, 2018
Public Hearing:	December 13, 2018 (scheduled)

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HEALTH FACILITIES LICENSING – Proposed Amendment and Proposed New Regulation

R.61-93, Standards for Licensing Facilities That Treat Individuals for Psychoactive Substance Abuse or Dependence

State Register Document TBD

Summary:

The Department proposes to amend R.61-93 for provisions relating to staffing, accident and incident reporting, emergency preparedness, construction, and licensure requirements for facilities that treat individuals for psychoactive substance abuse or dependence.

The Department may also include stylistic changes, such as corrections for clarity and readability, grammar, punctuation, definitions, references, codification, and overall improvement of the text of the regulation.

General Assembly review is required.

History and Status:

Notice of Drafting published:

June 22, 2018

Drafting comment period closed:

July 23, 2018

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R.61-125, Proposed New Regulation for Crisis Stabilization Unit Facilities

State Register Document 4809

Summary:

The Department of Health and Environmental Control (“Department”) proposes a new regulation to establish licensure and regulatory requirements for Crisis Stabilization Unit (“CSU”) Facilities. These facilities provide a short-term residential program offering psychiatric stabilization services and brief, intensive crisis services to individuals eighteen (18) years of age or older, twenty-four (24) hours a day, seven (7) days a week. Legislative review is required.

Link to Notice of Final Regulation submitted for legislative review:

<http://www.scstatehouse.gov/regs/4809.docx>

*Note: This Notice of Final Regulation did not receive a joint resolution of approval or meet the requisite 120 days of legislative review. As such, the amendments have not taken legal effect.

History and Status:

Notice of Drafting published:	May 26, 2017
Drafting comment period closed:	June 26, 2017
Board approval to publish Notice of Proposed Regulation:	January 4, 2018
Notice of Proposed Regulation published:	January 26, 2018
Proposed regulation comment period closed:	February 26, 2018
Public Hearing:	March 27, 2018
	March 8, 2018 (cancelled)
General Assembly review period of Notice of Final Regulation began:	March 28, 2018

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DISEASE CONTROL – Proposed Amendment
R.61-120, South Carolina Immunization Registry
State Register Document 4837

Summary:

The Department of Health and Environmental Control (“Department”) proposes amending R.61-120 to enable the Department to provide specific Healthcare Effectiveness Data and Information Set (“HEDIS”) data from the South Carolina Immunization Registry (“Registry”) to health plans for public health purposes and to measure performance on important dimensions of care and service, including immunization data for clients. Proposed amendments are also intended to provide details regarding the availability and use of a patient portal, which will be a feature of a new Registry allowing patients to access their personal immunization records. The proposed amendments will also remove obsolete language and make general improvements and clarifications to the text.

General Assembly review is required.

Link to Notice of Proposed Regulation: <http://www.scstatehouse.gov/regs/4837.docx>

History and Status:

Notice of Drafting published:	April 27, 2018
Drafting comment period closed:	May 28, 2018
Board approval to publish Notice of Proposed Regulation:	October 12, 2018
Notice of Proposed Regulation published:	October 26, 2018
Proposed Regulation comment period will close:	November 26, 2018
Public Hearing:	December 13, 2018 (scheduled)

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